



One voice for sport and recreation

April 2006

CENTRAL COUNCIL OF PHYSICAL RECREATION VOLUNTEERS/SPORTS CLUBS – NATIONAL MINIMUM WAGE ENFORCEMENT – DTI POLICY STATEMENT

Background

This guidance applies where an individual is paid money (including reimbursed expenses) or given a benefit by an employer and is obliged to perform an activity in accordance with the employer's instructions. In such cases, then there will almost certainly be a contract between the two parties and the individual will be a worker even if the individual considered themselves to be only "volunteering". From this it follows that the minimum wage is due unless the individual meets the criteria for voluntary workers under the NMW legislation.

Under the NMW legislation the onus is on the employer to be able to prove that the minimum wage has been paid, or is not due. This is intended to ensure that an employer cannot avoid his obligation to pay the minimum wage by being non-co-operative or by pleading an absence of documentation.

All of this has implications for sports clubs where arrangements for those who give their time in exchange for expenses or other benefits could inadvertently trigger the obligation to pay the minimum wage. Also, clubs might have difficulty in being able to demonstrate from the records they hold whether the minimum wage is due or has been paid – and without records the presumption would be that is due.

There are clear advantages in having workers classed as voluntary workers under the NMW legislation as the minimum wage need not be paid. This guidance is to help clarify what HMRC has to consider when looking at voluntary workers who do not qualify for minimum wage.

Voluntary workers are defined in the National Minimum Wage Act 1998, Section 44 as workers who are employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body. They do not qualify for minimum wage as long as:

- no payments are made to the worker except in respect of incurred expenses or where they represent a fair and reasonable estimate of out of pocket expenses; and
- the worker receives no benefits in kind, except the provision of reasonable subsistence (food and drink) or accommodation.

What has been agreed between the DTI, HMRC and the CCPR

Proactive Investigations

No proactive investigations: HMRC will not initiate investigations on CCPR members and affiliated volunteer/sports clubs for minimum wage compliance – but HMRC will of course look into cases where a worker or ex-worker makes a specific complaint that they should have been paid the minimum wage.

Charitable Status

Community Amateur Sports Clubs registered with HMRC under the Finance Act 2002, schedule 18 will be treated as being a charity for the purposes of the National Minimum Wage Act 1998, Section 44. This means that workers involved with these clubs who meet the voluntary worker criteria will not qualify for the minimum wage.

Non-monetary benefits-in-kind

This is important, as the provision of a benefit could trigger eligibility for the minimum wage.

- Match day volunteers: Where workers have access to a football match, golf competition or other sporting event as part of their voluntary role, (e.g. monitoring/assisting crowd safety, selling programmes, operating turnstiles), access to the event will not be treated as a non-cash benefit for minimum wage purposes.
- Provision of uniform, jumpers etc: where a worker or someone acting in an official capacity at a sporting event is provided with clothing to enable them to be distinguished from competitors and members of the public, the provision of such clothing will not be treated as a non-cash benefit for minimum wage purposes.

It should be noted that:

(i) The item provided has to be reasonable, i.e. a jumper or a jacket for a worker of a golf event is acceptable, providing a set of golf clubs is not;

(ii) The item should be necessary to perform duties, i.e. for a worker to stand out from crowd;

(iii) If the item is allowed to be retained – it has to be a gift, i.e. they might expect to receive but it must be the case that they're not entitled to receive it.

- Free food or drink and honoraria: where a free basic meal or drink is provided, such provision will be treated as reasonable subsistence. This could also cover cases where a reasonable honorarium is made, which may be expected, although there should not be any entitlement to the sum received. In such cases the provision of the food and drink or an honorarium would not on their own trigger eligibility for the minimum wage.

However, HMRC reserve the right to take enforcement action where they believe workers are being exploited e.g. where benefits-in-kind are being offered on a scale as a replacement for monetary payments. Workers will also have the right to take their own case to an Employment Tribunal.

Expense payments

Expenses can be paid at a flat rate if they represent a fair and reasonable estimate of out of pocket expenses and it would be otherwise administratively cumbersome for the provider to calculate individual expenses. Therefore a flat rate figure which represents genuine average expenses for a group of people would be acceptable. Records should be kept of all expenses paid and the organisation or club should be able to explain how they arrived at the level of expenses paid.

Paid/voluntary work

A coach (or similar) can provide additional time coaching on a voluntary basis and this time will not be considered as unpaid overtime. This will be the case as long as no payment is received for this period other than for actual or estimated legitimate expenses.

However, it is critical that what happens in practice is not simply an extension of what the coach provides under their contract, i.e.

there is no obligation that the coach will be volunteering their time;

the original payment by the club is not provided on the basis of additional voluntary time being worked;

the coach is not under the direction of the club during the voluntary period, other than in connection with mandatory statutory obligations (e.g. in connection with child safety), the coach is free to go after the contracted time is completed and does not suffer any detriment if they do not volunteer.

Office Holders

Office Holders are exempt from the minimum wage. Their defining characteristic is that the office, which exists independently of the person who fills it, defines rights and duties of the office holder. An Office Holder could be a club secretary or treasurer. However if the office holder also holds a worker's contract with a named individual/employer, or they are working with both the expectation of and an entitlement to an honorarium, then they may be brought within the scope of the minimum wage.

Record Keeping

Clubs should retain entries in cash and petty cash books, keep records of the identities of those receiving payments, when they "work" and for how long. Clubs need to keep a record of how estimated expenses are calculated. This record keeping is for the club's own benefit as the onus of proof lies with them should an individual claim that the minimum wage should have been paid.

National Minimum Wage

Age Group	Current NMW	NMW from 1 Oct 2006
The main rate for workers aged 22 and over	£5.05	£5.35
The development rate for 18-21 year olds	£4.25	£4.45
The development rate for 16-17 years olds	£3.00	£3.30
The rate of the accommodation offset	£27.30	£29.05

Source: <http://www.dti.gov.uk/er/nmw/>